

Fair Political Practices Commission

Memorandum

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: June 2002 Work Plan Revisions

Date: May 28, 2002

I. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.¹ The plan provides for quarterly work plan revisions. Attached is the June update to the regulatory work plan for calendar year 2002 reflecting changes during the second quarter.

Currently, there are 26 items on the regulation calendar under four category headings (attached). Section II of the memorandum discusses recommended revisions to the calendar. Proposed revisions will be set forth under these headings, designated with the same item number.

II. PROPOSED REVISIONS

A. Campaign/Lobbyist Regulations

Item 1. Advertising Disclosure: (§§ 84501-84510) These provisions are surviving provisions added by Proposition 208. The purpose of the advertising disclosure rules is to inform voters of the “big money” behind political advertisements. However, interpretive issues exist with respect to whether advertisements for or against a ballot measure are subject to §§ 84502-84504 or § 84506 (governing independent expenditures), or both. Additional issues that may be clarified by regulation: what types of advertisements are subject to the rules; are there exceptions; clarification of the term “cumulative contributions” as defined in § 84502; the treatment of independent expenditure advertisements under § 84506; the specific content of the disclosure; and under what circumstances a disclosure must be amended.

CHANGE: While the Commission has adopted several regulations construing the regulatory scheme, the Commission will consider three additional regulations (18450, 18450.1 and 18450.2) defining the scope of the disclosure requirements of the statutes, and the terms “advertisement” and “cumulative contributions” as used in the statutes. These items were pre-noticed in May and will be considered for adoption in July.

¹ See staff memorandum dated November 14, 2001, *Approval of Regulation Calendar for the Year 2002*.

Item 3. Aggregation of Contributions: Regulation 18428 addresses the disclosure and notification requirements of affiliated entities that participate in the financing of elections. (§ 84211.) Originally, regulation 18428 implemented the Commission's *Kahn* ((1976) 2 FPPC Ops. 151) and *Lumsdon* ((1976) 2 FPPC Ops. 140) opinions requiring a "combination of persons" file one campaign statement. The regulation defined "affiliated entities" as "a person or group of persons whose campaign contributions are directed and controlled by another." The Commission will consider issues raised by regulations 18428, 18215.1, 18225.4, and 18531.1.

CHANGE: The regulation may be further amended to require additional disclosures on the Form 460, and to bring this general provision into harmony with regulation 18419, governing sponsored committees. Pre-notice is set for October with final adoption in December

Item 5. Regulation 18452 – CalPERS' Reporting Requirements: § 84225 requires candidates for the Board of Directors of CalPERS to file certain campaign reporting statements. Regulation 18452, as directed by statute, sets forth the filing schedule and describes the contents of those statements. CalPERS prepared an election schedule that provided for runoff elections under certain circumstances, requiring amendment of regulation 18452, since the regulation makes no provision for the filing of statements required by law during runoff election cycles. In addition, it is unclear where these candidates file.

CHANGE: Due to issues related to the regulation adopted by CalPERS, this item has been delayed one month. Pre-notice is now set for June and adoption in August.

Items 6. and 7. Cost of Living Adjustment to Contribution and Expenditure Limits: (§ 83124). Proposition 34 requires the Commission to adjust the contribution and voluntary expenditure limits in §§ 85301, 85302, 85303, and 85400, effective January 2003.

CHANGE: In recognition of the fact that a process must first be adopted, one that can be followed every two years when the adjustments are required, we have split this item into two items. Item 6 reflects the project to establish the process of adjusting the limits. This item is set for pre-notice in June and adoption in August. It is necessary to enact this "process" well before January 1, 2003, so that the limit may be adjusted in a timely manner. Item 6 is not recurring. Item 7 is the actual adjustment for calendar year 2003. This will occur in November. This regulation will be amended every two years.

Item 8. Cost of Living Adjustment to Gift Limits: (§ 89503) The Commission must adjust the gift limits in § 89503 effective January 1, 2003. Pre-notice is set for September with adoption in November.

CHANGE: This item was added and coincides with the adjustment in item 7.

Item 9. "Independent Expenditure" - Clarify definition: § 82031 defines "independent expenditure" as "an expenditure made by any person in connection with a

communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.” Currently, no regulation clarifying when an expenditure is or is not made at the behest of a candidate or committee exists.

CHANGE: An additional pre-notice hearing was set for June, however, based on feedback from the interested persons’ meeting on this item, it appears that the one pre-notice in July will be sufficient. Therefore, the June pre-notice was deleted.

Items 10. and 11. Lobbyist Contributions: (§ 85702) Section 85702 prohibits contributions by a lobbyist to elected state officers or candidates for elected state office, if the lobbyist is registered to lobby the government agency of the elected state officer or the agency to which the candidate seeks election.

CHANGE: Initially, this item only concerned when the making of a contribution by a lobbyist was prohibited. This item, set for adoption in June, was actually adopted in May. However, the adoption of the “making” contribution in May raised issues that are now dealt with in item 11. Item 11 concerns a regulation defining when the statute is violated as a result of the acceptance of a contribution.

Item 13 and Item 15. Member Communications and Political Party Issues: (§§ 85312, 85205) Scope and definition of terms. Section 85312 provides that certain payments for communications to “members, employees, shareholders, or families of members, employees, or shareholders of an organization” are not contributions or independent expenditures. While the Act currently provides a definition for the term “immediate family” pertaining to conflict of interest and disclosure rules, the term “families” as used in § 85312 may be interpreted more broadly. Similarly, other undefined terms of this section including “member,” “employee,” “shareholder,” “communications,” and “organization” warrant examination and definition by the Commission. Section 85303 also provides limitations on contributions “for the purpose of making contributions to candidates for elective state office.” Section 85303 also provides a higher contribution limit for political party committees. A regulation setting forth criteria for determining when a contribution falls within this section may be required.

CHANGE: The member communication and political party regulation has been treated as a single item and separate items at various times. At this time staff does not believe that a regulation exclusively dealing with parties will be presented. Thus, staff is again recommending that the “political party” issues be considered in the member communications regulation.

Item 17. Proposition 34 Update, Review of Recordkeeping: Regulation 18401 sets forth record-keeping guidelines. Proposition 34 established contribution and expenditure limits for state elections and added statutes impacting local jurisdictions as well. The changes required review and possible amendment to various regulations. One change proposed minor amendments to regulation 18401 (implemented in the Commission’s technical packet).

CHANGE: An adoption hearing was set for any items generated out of the Proposition 34 review. However, no regulations generated by this project are currently set to be heard in July, and the hearing date has been deleted.

Item 20. Amendment to regulation 18539.2: (§ 85310) The Commission will consider whether to add specified information to the electronic form as requested by the Secretary of State.

CHANGE: New item.

B. Conflict of Interest

Item 3. *In re Siegel*: Discussion of new regulatory factors defining when a nonprofit entity will be considered a local governmental agency. The current rule exists only in the *Siegel* Opinion and has not been codified. Staff has met with representatives of the California League of Cities to further consider the proposal. As part of the last work plan revisions, staff recommended against adding further conflict-of-interest projects to the calendar this year. Currently, four potentially large projects have been placed on the calendar at the urging of the regulated public. However, it was agreed that an interested persons' meeting could be held on the topic this year.

CHANGE: This item is set for an interested persons' meeting in July.

C. 2002 Planning Objectives

NO CHANGES.

D. Miscellaneous Items

NO CHANGES: